No. 90-1126

MOTION FILED
FEB 7 1991

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners,

v.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERRA, STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting the COOK COUNTY OFFICERS BOARD, STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS, ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF INDEPENDENT VOTERS OF ILLINOIS-INDEPENDENT PRECINCT ORGANIZATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

MICHAEL P. SENG *
WALTER J. KENDALL III
315 South Plymouth Court
Chicago, IL 60604
(312) 427-2737
Attorneys for Amicus Curiae

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1126

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners,

v.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERRA, STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting the COOK COUNTY OFFICERS BOARD, STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS, ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

---

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

The Independent Voters of Illinois-Independent Precinct Organization (IVI-IPO) respectfully moves for leave to file the attached brief as *Amicus Curiae* in support of the Petitioners. Consent to file this brief has been obtained from the Petitioners and the Cook County Electoral Board. The Chicago Board of Election Commissioners has stated that it has no objection to the filing of this amicus brief. The remaining Respondents oppose this motion on the ground that IVI-IPO is supporting the position of the Petitioners.

The decision of the Illinois Supreme Court in this case interpreting the Illinois election laws directly limits the access of new political parties to the ballot in a way that restricts First Amendment rights and is discriminatory in violation of the Fourteenth and Fifteenth Amendments and the Voting Rights Act. Requiring Petitioners and other new political parties that desire to run candidates in Cook County to obtain 25,000 signatures in the City of Chicago and another 25,000 signatures in the areas of Cook County outside the City of Chicago when only 25,000 signatures are required to form a new statewide party unduly abridges their right to associate and advance their political beliefs and the right of qualified voters, regardless of political persuasion, to cast their ballots effectively.

The Illinois Supreme Court's interpretation of the Illinois election laws allows the voters from one political component to defeat the choice of the voters in another, separate component. In elections where racial segregation or racial polarization exists, the system sanctioned by the Illinois Supreme Court can easily result in the voters in a district where one race predominates defeating the preferred choice of voters in another district where another race predominates.

Finally, the system sanctioned by the Supreme Court of Illinois is not the least drastic means for the State to accomplish its legitimate ends.

The IVI-IPO is a non-partisan organization of Illinois voters which is active in endorsing and supporting candidates of all parties for office both in party primary and general elections.*

Established in 1944, IVI-IPO is a voluntary political association whose existence and effectiveness depends on freedom of association and open participation in the processes of government. IVI-IPO has a very substantial membership in Cook County, Illinois. It therefore has an interest in the electoral system and in ballot access questions which affects it and its members. IVI-IPO has an interest in this case from the point of view of an independent political organization of longstanding that has fought for political electoral reform at the polls and through the courts including participation in *Rutan v. Republican Party of Illinois*, 110 S.Ct. 48 (1989) and *Elrod v. Burns*, 425 U.S. 909 (1976). IVI-IPO does not see this dispute as one solely between the Harold Washington Party and the Democratic Party. It sees this case as affecting all new and independent political organizations that are seeking or will seek ballot access in Illinois in the future, particularly in subdivisions of the state, such as counties.

For this reason, the Independent Voters of Illinois-Independence Precinct Organization believes that this Court's review is needed, and submits the attached brief in support of the Petitioners.

Respectfully submitted,

MICHAEL P. SENG
WALTER J. KENDALL III
Attorneys for Amicus Curiae

---

* IVI-IPO endorsed ten Democrats running county-wide or for membership on the Cook County Board from Chicago or the Cook County suburbs for the November 6, 1990 general election. IVI-IPO also endorsed seven Republican candidates and two Harold Washington Party candidates for these offices in Cook County in the November 6, 1990 election.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. THE DECISION OF THE ILLINOIS SUPREME COURT UNDULY RESTRICTS ACCESS TO THE BALLOT IN ILLINOIS	4
II. THE DECISION OF THE ILLINOIS SUPREME COURT IS IN DIRECT CONFLICT WITH *ILLINOIS STATE BOARD OF ELECTIONS v. SOCIALIST WORKERS PARTY*	5
III. THE DECISION OF THE ILLINOIS SUPREME COURT PERMITS VOTERS IN ONE GEOGRAPHIC AREA TO EXCLUDE FROM THE BALLOT THE CANDIDATES FAVORED BY VOTERS IN ANOTHER GEOGRAPHIC AREA	6
IV. THE DECISION OF THE ILLINOIS SUPREME COURT RESTRICTING THE USE OF A PARTY'S NAME VIOLATES DUE PROCESS AND EQUAL PROTECTION	7
CONCLUSION	8

TABLE OF AUTHORITIES

Cases:	Page
Bowe v. Board of Election Commissioners, 614 F.2d 1147 (7th Cir. 1980)	5
Communist Party of Illinois v. State Board of Elections, 518 F.2d 517, *cert. denied*, 423 U.S. 986 (1975)	4
Gomillion v. Lightfoot, 364 U.S. 339 (1960)	7
Illinois State Board of Election v. Socialist Workers Party, 440 U.S. 173 (1979)	3, 4, 5
Moore v. Ogilvie, 394 U.S. 814 (1969)	3, 4, 6
Reynolds v. Sims, 377 U.S. 533 (1964)	6
Rutan v. Republican Party of Illinois, 110 S.Ct. 48 (1989)	2
Thornburg v. Gingles, 478 U.S. 30 (1986)	7
White v. Regester, 412 U.S. 755 (1973)	7
Williams v. Rhodes, 393 U.S. 23 (1968)	4, 5, 7
U.S. Constitution:	
Amend. I	2
XIV	7
XV	7
Statutes:	
Federal:	
Voting Rights Act of 1965, 42 U.S.C. § 1973, as amended	7
State:	
The Election Code, Chapter 46, section 10-2	3, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1126

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners,

v.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERRA, STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting the COOK COUNTY OFFICERS BOARD, STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS, ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

---

BRIEF OF INDEPENDENT VOTERS OF ILLINOIS-INDEPENDENT PRECINCT ORGANIZATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

By leave of Court, the Independent Voters of Illinois-Independent Precinct Organization files this brief as *Amicus Curiae* in support of the Petitioners.

INTEREST OF *AMICUS CURIAE*

The Independent Voters of Illinois-Independent Precinct Organization (IVI-IPO) is an organization of voters which is active in endorsing and supporting candidates for public office both in party primary and general elections.[1] IVI-IPO has an interest in maintaining a free, fair electoral system.

When issues involving restrictions on the access to a ballot are before this Court, IVI-IPO seeks to provide assistance by the filing of *amicus curiae* briefs. See, e.g., *Rutan v. Republican Party of Illinois*, 110 S.Ct. 48 (1989).

The decision of the Illinois Supreme Court in this case acts as a serious restriction on independent political organizations that seek access to the ballot and limits the rights of qualified voters to cast ballots for the candidates of their choice. The decision may also seriously affect the ability of minority political organizations to participate in the political process. Voters in one geographic area can prevent candidates in another geographic area from having access to the ballot. This can seriously restrict the free flow of political opinion in violation of the First Amendment. In racially segregated areas where voting is done along racial lines, it can enable voters in a geographic area where voters of one race predominate to defeat the choice of voters in another geographic area where voters of another race predominate.

[1] IVI-IPO endorsed ten Democrats running county-wide or for membership on the Cook County Board from Chicago or the Cook County suburbs for the November 6, 1990 general election. IVI-IPO also endorsed seven Republican candidates and two Harold Washington Party candidates for these offices in Cook County in the November 6, 1990 election.

IVI-IPO believes that the potential impact of the Illinois Supreme Court's decision extends beyond this one election dispute.[2] It will seriously affect the ability of new, independent parties to grow and to run candidates for office in both district and at-large elections. The decision affects not only Chicago/Cook County but all 102 counties in the State of Illinois. It not only affects the Harold Washington Party but all existing and future independent political organizations.

IVI-IPO agrees with Petitioners that the requirements of the Illinois Election Code as interpreted by the Illinois Supreme Court are overbroad and are not necessary to achieve legitimate state interests. They unduly restrict ballot access so as to jeopardize free and open political expression.

SUMMARY OF ARGUMENT

The decision of the Illinois Supreme Court required the Harold Washington Party to obtain 25,000 signatures in the city and 25,000 in the county unduly restricts access to the ballot in Illinois. It is in direct conflict with *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) and it permits voters in one geographic area to exclude from the ballot the candidates favored by voters in another geographic area in violation of *Moore v. Ogilvie*, 394 U.S. 814 (1969).

[2] The November 6, 1990 election is over, but the Illinois Supreme Court's interpretation of the Illinois statutes will remain and will control future elections in Illinois. The problem is therefore "capable of repetition, yet evading review." *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 187 (1979).

ARGUMENT

I. THE DECISION OF THE ILLINOIS SUPREME COURT UNDULY RESTRICTS ACCESS TO THE BALLOT IN ILLINOIS

The Illinois Supreme Court's decision in this case sanctions a practice of excluding independent parties from ballot access in Illinois that goes back a number of years *See Moore v. Ogilvie*, 394 U.S. 814 (1969) (invalidatir a requirement that a new political party obtain 25,0[illegible] qualified voters, including 200 qualified voters from at least 50 counties); *Communist Party v. State Board of Elections*, 518 F.2d 517 (7th Cir. 1975), *cert. denied*, 423 U.S. 986 (1975) (invalidating a requirement that new parties obtain 25,000 signatures of qualified voters, not more than 13,000 of which could be counted from any one county); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) (invalidating a requirement that new parties running in a subdivision of the state must obtain more than 25,000 signatures, 25,000 signatures being the number required to obtain access to a statewide ballot).

This Court has recognized that restrictions on access to the ballot burden two distinct fundamental rights: "the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion to cast their votes effectively." *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979), quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). When such fundamental rights are at stake "a State must establish that its classification is necessary to serve as compelling interest." *Illinois State Board of Elections v. Socialist Workers Party, supra.* Furthermore, "even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty". The States must adopt "the least drastic means to achieve their ends." *Illinois State Board of Elections v.*

Socalist Workers Party, supra, 440 U.S. at 185. *See also, Williams v. Rhodes,* 393 U.S. 23, 31-33 (1968).

The State of Illinois cannot show that the means chosen here are necessary to achieve its ends.

II. THE DECISION OF THE ILLINOIS SUPREME COURT IS IN DIRECT CONFLICT WITH *ILLINOIS STATE BOARD OF ELECTIONS v. SOCIALIST WORKERS PARTY*

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 186 (1979), requires a State to have a "compelling" reason to require more petition signatures for getting on the ballot in a smaller voting unit than in the state as a whole. In that case, this Court condemned a requirement whereby 63,373 signatures were required to create a new political party in Chicago whereas only 25,000 signatures were required to create a new state-wide party in Illinois. Here the Illinois Supreme Court has interpreted the statute to require that the Harold Washington Party candidates need 50,000 signatures to get on the Cook County ballot while it would need only 25,000 signatures to run state-wide. This is blatantly inconsistent with the holding of *Socialist Workers Party.* The disparate treatment cannot be justified even under the rational-basis test. *See* concurring opinion of Chief Justice Rehnquist, 440 U.S. at 191.

Furthermore, the means chosen by the State to regulate the ballot are not the "least drastic means" to assure that candidates enjoy "a significant modicum of support before a new political party may appear on the ballot." *Bowe v. Board of Election Commissioners*, 614 F.2d 1147, 1151 (7th Cir. 1980). In the present case, the Harold Washington Party demonstrated significant support in both the city and the county at-large. The only area it was deficient was in non-Chicago Cook County.[3] Even if

[3] "Deficient" is a relative term here. The Harold Washington Party had approximately 7,000 suburban-only signatures. Candi-

there existed a good reason to exclude the Harold Washington Party from the suburban-only races, there is clearly no good reason to exclude them from the city-only and the at-large county races.

III. THE DECISION OF THE ILLINOIS SUPREME COURT PERMITS VOTERS IN ONE GEOGRAPHIC AREA TO EXCLUDE FROM THE BALLOT THE CANDIDATES FAVORED BY VOTERS IN ANOTHER GEOGRAPHIC AREA

The effect of the decision of the Illinois Supreme Court is to give suburban voters in Cook County a veto over who can run for office in the City of Chicago or at-large in Cook County. The decision thus presents the same discrimination that this Court condemned in *Moore v. Ogilvie*, 394 U.S. 814 (1969). In *Moore*, this Court held that the Illinois Election Code's requirement that a new political party obtain the signatures of 25,000 qualified voters, including 200 qualified voters from at least 50 counties, violated due process and equal protection. That requirement permitted the voters of less populous counties to exercise a veto over the choice of residents in more populous counties and violated the one person, one vote basis of a representative government. *See Reynolds v. Sims*, 377 U.S. 533 (1964).

The current requirement is even more restrictive. It not only allows a minority to thwart the desire of a majority, it allows the voters in one geographical component to prevent the voters in a separate geographical component from voting for the candidates of their choice solely within that component. Suburban voters can thus prevent candidates from running for city-only offices. This is not only irrational; it violates the very premise of a representative government.

---

dates seeking nomination as suburban county board members in the Republican and Democratic primaries for this election needed under 2,500 signatures. Illinois Solidarity Party candidates needed fewer than 200 signatures.

The requirement is also offensive because it can allow voters in districts where one race is predominate to defeat the preferred candidate of voters in another district where another race is predominate. Election schemes that operate to fence out a racial minority violate the Fourteenth and Fifteenth Amendments, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *White v. Regester*, 412 U.S. 755 (1973), as well as the Voting Rights Act, *Thornburg v. Gingles*, 478 U.S. 30 (1986).

IV. THE DECISION OF THE ILLINOIS SUPREME COURT RESTRICTING THE USE OF A PARTY'S NAME VIOLATES DUE PROCESS AND EQUAL PROTECTION

The Illinois Supreme Court also held that the Harold Washington Party cannot be on the ballot because use of that party's name violates a separate statutory provision which prevents a party from using the name of another established political party. The Illinois Supreme Court ruled that a political party established in one electoral unit cannot expand or grow into another political unit under the same name unless it runs state-wide. Even "permission" from the local established party to the "expanding" new party is not sufficient to permit it to use its name. (See Justice Miller's dissenting opinion, slip opinion at p. 3.) This "additional substantial burden," *Williams v. Rhodes*, 393 U.S. 23, 24 (1968), is likewise unconstitutional. It is clearly not the "least drastic means" necessary to protect the legitimate interests of the State in protecting the names of established political parties and in not confusing the voters.

CONCLUSION

As an independent, non-partisan political organization, IVI-IPO believes that as a matter of public policy, it is essential that state election laws be construed and applied whenever possible to allow access to the ballot, not to prohibit it. In this case the Illinois Supreme Court has violated this fundamental dictum. For the foregoing reasons, the decision of the Illinois Supreme Court striking the Harold Washington Party from the ballot should be set aside, and the statute as interpreted declared unconstitutional.

Respectfully submitted,

MICHAEL P. SENG *
WALTER J. KENDALL III
315 South Plymouth Court
Chicago, IL 60604
(312) 427-2737
* Counsel of Record *Attorneys for Amicus Curiae*